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November 19, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its twenty-ninth meeting on October 17 and 18, 2007, in Washington D.C.

The meeting focused on the following three areas of interest identified by EPA: 1) the need for a communications strategy, 2) emerging trends in North America, and 3) the CEC's Operational Plan. The NAC also discussed the status of the citizen's submission process and several miscellaneous issues for which advice is also included in this letter. At its last meeting the NAC and GAC committees worked on developing new ideas for potential project development with the goal of maximizing the relevance of the CEC to its constituents. Seven potential projects were developed by the NAC and GAC as a starting point for a dialogue on new potential projects of high relevance. These projects were discussed in some detail at this meeting. The NAC is very encouraged that several of these ideas were taken on, considered by the Parties, and are now included to different degrees in the Operational Plan (2008-2010). The NAC and its members are committed to assist and advise the US government as needed to further develop, explore or implement these ideas.

We would like to express our appreciation to the invited guests that joined the NAC and GAC at this meeting, made presentations to the committees and participated in our discussions; they are: Irene Henriques, JPAC Chair; Adrián Vazquez, from the CEC; Annie Petsonk, Environmental Defense; John Pendergrass, Environmental Law Institute; Michael Brody, EPA's Office of Chief Financial Officer; Carol Jorgensen, EPA's American Indian Office; Robert Wing, US State Department's Oceans, Environment, and Science Bureau; and Jim Willis and Ana Corado from EPA's Office of Prevention, Pesticides and Toxics.

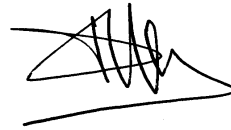
The NAC would like to take this opportunity to welcome three new members and thank three outgoing members for their dedication and service. The new members are: Barry Featherman from the Inter-American Economic Council, Robert Johnson from the Wildlife Habitat Council, and Jerry Padilla from the National Tribal Environmental Council. The outgoing members are: Glen Prickett with Conservation International, Michael Andrews with The Nature Conservancy, and Adam Green from the U.S. Council for International Business. We particularly wish to thank Adam for his thoughtful dedication and commitment to the work of the CEC for so many years.

Finally, we thank Jerry Clifford from the EPA Office of International Affairs for his letter in response to our last advice dated August 3, 2007, as well as Scott Fulton, Sylvia Correa, and Evonne Marzouk for attending the meeting and participating in our discussions. We also extend our gratitude to Rafael de León, Mark Joyce, Oscar Carrillo, Nancy Bradley, and Jannell Young-Ancrum, from the EPA Office of Cooperative Environmental Management for organizing and staffing this meeting.

We hope this advice will be of use to you, and other US government officials as we continue to think about how best we can support the CEC in achieving its mission.

Thank you for the opportunity to advise you on these matters.

Very truly yours,



M. Dolores Wesson
Chair, National Advisory Committee

cc: Jerry Clifford, Acting Assistant Administrator for International Affairs
Scott Fulton, Acting Deputy Assistant Administrator for International Affairs
Rafael de León, Director, Office of Cooperative Environmental Management
Jeff Wennberg, Chair, U.S. Governmental Advisory Committee
Irene Henriquez, Chair, Joint Public Advisory Committee
Adrián Vazquez, Executive Director, Commission in Environmental Cooperation
Patricia Muñoz, Acting Chair, Grupo Operativo del Consejo Consultivo Nacional para el Desarrollo Sustentable, Mexico
Members of the U.S. National Advisory Committee:
Dennis Aigner Aldo Morell
Karen Chapman Jerry Pardilla
Irasema Coronado Carlos Perez
Barry Featherman Anne Perault
Richard Guimond Chris Wold
Robert Johnson

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

**Advice 2007-4 (November 19, 2007): Response to EPA's request on the need for a
communications strategy for the CEC**

The NAC reviewed seven questions provided by EPA regarding a communications strategy for the CEC. The ensuing discussion centered around three issues: 1) the difference between internal and external communication; 2) the responsibility for message development and delivery; and, 3) the generally high cost of public relations and relatively low budget of the CEC for such things.

Members of the NAC recommended that as a first step, the CEC should review and define the purpose, or purposes, of its communications. For example, is the purpose of a communications strategy to promote environmental stewardship, to share information about a CEC report or product, or is it to promote greater awareness of the CEC in general? A good communications strategy should include a clear understanding of purpose, audience, and tailor the message accordingly.

Along these lines, the NAC felt that there were two communications strategies needing to be addressed: internal communications – i.e. communication between the Secretariat and the Parties – and overall messaging and delivery for communicating the CEC's mission and products to the general public. As an example of an internal communications, the draft Operational Plan as it has been presented to the NAC, is generally not encapsulated well and could more efficiently represent the projects, their goals and their relationship to the pillars, as well as a very brief, possibly graphical timeline or “percent-of- completion” report and planned date of closure for the projects.

The NAC also discussed the responsibility each of the Parties should and can play in elevating the profile of CEC among its constituencies. For example, the CEC should be an element in the EPA's communications strategy, but is not mentioned in EPA's Strategic Plan. The NAC believes that communicating the goals, mission and accomplishments of the CEC is largely a responsibility of the Secretariat, but also believes that the Parties can individually take actions to elevate the profile, and consequently, the relevance, of the CEC within each country.

On external communications, given the relatively small budget available to the CEC for outreach and communications, limited staff time allocated to the issue, and the high cost of public relations, the NAC felt that a contract or small-scale consultancy with a public relations or communications firm might be feasible for a one-time review of existing procedures (e.g. does the CEC have a standard and regularly updated press contact list for each country?) and development of an overall communications strategy. Such a strategy would have to take into account normal constraints, such as standard operating procedures and approval

processes, and be flexible enough to be broadly applicable to the range of products, audiences and venues relevant to the CEC's work.

The NAC understands that the CEC faces constant budget constraints, but given the need to elevate the visibility of the CEC's work and the opportunity available to increase its visibility, the NAC believes the CEC should have a full time public information officer directing communications efforts according to the strategy and its purpose, and coordinating efforts with existing staff members and the three Parties where appropriate.

Finally, the NAC felt that the CEC could more fully track and distribute information about "passive" outreach through website "hits" by English-, Spanish-, and French-speaking visitors, and by tracking numbers of listserve members, requests for information, and reports distributed.

Recommendation: Consider contracting with a public relations or communications firm to develop a communications strategy for the CEC that would be sensitive to the multi-cultural diversity of the CEC audience as well as the constraints placed on the organization with regard to approval processes, and flexible enough to be applied to the variety of products the CEC manages. The CEC should have a full-time communications director charged with implementing the communications strategy, once it has been developed.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2007-5 (November 19, 2007): Response to EPA's request on the emerging trends

The committees heard presentations very generally related to trends in environmental change, climate, rapid technology developments, and nanotechnology. Both issues are deemed of great importance by the NAC and should continue to be addressed as a matter of highest priority by the CEC.

The NAC is very interested in the issue of emerging trends and in the upcoming conference planned by the CEC for the spring of 2008. The idea of using this conference as a starting point for the State of the Environment report is reasonable strategy; the conference should help frame and focus the emerging trends where the CEC can potentially make a significant contribution.

Specifically on the issue of climate change, the NAC and GAC strongly advocated the use of market mechanisms to address greenhouse gas emissions in its last letter of advice. The CEC has developed key programs and documents in this area that constitute a very good starting point to build this as one of its signature areas of focus and expertise.

Some concern was expressed that the CEC could not cover all environmental issues and should therefore focus on indicators that are linked to its Operational Plan and on-going programs or that are clearly related to the three pillars defined in the Puebla Declaration. Partnerships with other multilateral organizations and initiatives pursuing the development of environmental indicators, trends and state of the environment reports should be continued. Some of these organizations are the Global Earth Observation System of Systems (GEOOS), OECD, and UNEP.

Climate-related indicators for North America are considered by the NAC to be essential to the development of a rigorous and truly informative state of the North American environment report. Indicators on urban sprawl, transportation and energy use and greenhouse gas emissions are all pertinent to the impact and ecological footprint of North Americans on the continental and global environment. Should CEC have to limit its efforts in this area, the NAC recommends that it focus down its efforts and build its programs around areas where it has a well-established expertise; these areas include climate, energy, chemicals and the tracking and management of pollutants.

Recommendation: The NAC strongly encourages the CEC to continue its planned activities and to link the emerging trends work and Spring 2008 conference to the forthcoming State of the Environment report mandated under Article 12 (3), in the territories of the Parties. Climate change indicators will be vital under any scenario and should be included in the portfolio under consideration by the CEC as a matter of top priority. Nanotechnology should also be given top consideration.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2007-6 (November 19, 2007): Response to EPA's request on the Operational Plan

The EPA provided the NAC and GAC committees with a draft of the Operational Plan for 2008 to review prior to the meeting without appendices; hence our discussions and comments are more general in nature and refer only to the main text of the draft.

The North American climate registry and the renewable energy credit certification program. The NAC was very encouraged to see that the Draft Operational Plan incorporates the two proposals submitted by the NAC and GAC in the May 2007 letters related to climate change: the North American climate registry, and the renewable energy credit certification program. See Advice 2007-1, (May 24 2007). These two projects have the potential to significantly affect positive behavior in consumption patterns, promote renewable energy markets, and reduce greenhouse emissions in North America.

The CEC has a long-standing history of producing high quality work in the area of renewable energy and air emissions with reports such as *Taking Stock, Environmental Challenges and Opportunities of the Evolving North American Electricity Market*, and *Mexico and Emerging Carbon Markets: Investment Opportunities for Small and Medium-Size Companies and the Global Climate Agenda*. Its expertise in these areas is well established, and continuing to develop projects related to this work should be a high priority from both the trade and environment perspectives.

Expanding sustainable trade. The proposal on expanding sustainable trade (proposal 5) will be addressed by way of a conference that is now in the planning stage; three separate symposia leading up to this meeting have been held to date. The NAC is pleased that these efforts are underway and that the trade and environment working groups are working effectively in this regard. We look forward to assisting in any way possible to raise the awareness and profile of this conference.

North American Fellowship and Visiting Scholars Programs. Related to the proposal for the creation of a fellowship program for students and visiting scholars (proposal 4), the committees were briefed on some of the difficulties that stand in the way of its implementation. These are mainly logistics, coordination responsibilities, difficulties with immigration visas, and funding sources for the scholarships and scholars. Educating and mentoring a network of young scholars and professionals with knowledge and background in trade and environment, understanding of the three countries' institutional behavior, national perspectives, and unique needs and sensibilities, would greatly benefit the CEC by raising its profile and expanding its network, and the environment and trade agencies of the three Parties.

The NAC was encouraged to hear that alternative avenues for implementation and discussions are still underway with academic institutions, in particular the Council of Environmental Deans and Directors (CEDD). Other alternatives may also be available with state and tribal governments, as well as philanthropic organizations. Because the

coordination and implementation of this program could be a burden for the CEC, the program, as proposed, left the issue of coordination unresolved. The coordination function of the program could be undertaken by federal agencies of the three Parties, such as EPA in the case of the US, or by academic entities. Alternative models for implementing academic fellowship programs might be explored as avenues to resolve some of the difficulties mentioned at the meeting. To facilitate its implementation initially, the program can first target a small number of students that have secured funding opportunities through standard academic avenues, or at federal agencies, and have approved visas at the time of application. The NAC's academic members would like to offer their expertise to assist in any way possible with the implementation of this proposal.

Promoting environmental compliance. The NAC is pleased to see that the next JPAC meeting scheduled for December 6 in San Antonio, Texas will focus on enforcement matters. We hope this venue will serve as a forum to discuss some of the enforcement issues raised in the NAC proposal aimed at identifying tools and procedures that facilitate compliance with environmental law.

General comments on the Operational Plan. The NAC has commented at length before on issues related to format and style, as well as content of the Operational Plan. (See Advice 2006-6, November 15, 2006.) It may however be useful to reiterate some of these discussions. The NAC believes that the Operational Plan should be more accessible and understandable to the general public; some of the projects are not sufficiently described and justified, which may well be a function of this being a very early draft.

Past advice has emphasized the need for highlighting the many accomplishments of the CEC. However, the draft Operational Plan lists "key accomplishments planned for 2008", which in the view of the committee may more appropriately be termed as "objectives for 2008". Both should be included: past accomplishments of work that has already been done, as well as the future objective of the work plan as it is planned. As drafted, it is hard to tease apart what has been achieved from what is in fact still a work in progress.

On the issue of the budgets, it is difficult to track individual budget changes and allocations over time for different projects under the budget section since only one year is provided, 2008. The Operational Plan should be transparent in laying out both past and future budgets over a period of several years (three years, ideally) so that changes in projects and programs can be easily tracked and understood. Some projects appear to have been ongoing for several years when in fact they may have never been started. The invasive species project may be a case in point. It is also difficult to track the amount of funding that becomes un-obligated in any given year, and is therefore available for new initiatives. The NAC recommends that either as a stand-alone document or as a section of the Operational Plan, a short and succinct annual report should be presented with an overview of the budget, a statement of the status of each project and a quick list of accomplishments.

In past advice the NAC noted that revising the entire Operational Plan every year may be unnecessary and cautions against spending too many resources and energy on this exercise. It may be more efficient to examine one third, or one half of the cooperative work program every year, and do so in more detail and depth than to re-visit the entire plan every year.

Recommendation: The NAC is tremendously supportive of the new initiatives outlined in the Operational Plan on a North American climate registry and a renewable energy credit certification program and recommends that they be advanced as expeditiously as possible. Implementation of these programs should be a top priority; we cannot sufficiently stress the importance and urgency that we attach to these programs.

Recommendation: The NAC suggests that the fellowship project might first be approached on a pilot scale. The coordination functions could be undertaken by an academic entity in partnership with the CEC; host offices would be located initially at USEPA, Environment Canada, and the Secretaría de Medio Ambiente (SEMARNAT).

Recommendations: The budget section of the Operational Plan should display information for no less than three years (the prior year, the current year, and the next year). Including this information should facilitate tracking programmatic changes over time. Accomplishments of past work should be highlighted in an annual report, either as a section of the Operational Plan, or a separate document.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2007-7 (November 19, 2007): status of the citizen's submission process

The citizen submission process of Articles 14 and 15 is an important means for achieving the NAAEC's goal to promote transparency and public participation in the development of environmental law, to strengthen cooperation, to develop and improve environmental practices, and to enhance compliance with and enforcement of environmental law. It also provides a valuable opportunity for North Americans to address enforcement issues in the context of regional free trade. Many have regarded the citizen submission process as a potential model for accountability and governance for a new breed of international institutions – a positive response to globalization that gives citizens a voice in the often impenetrable affairs of international organizations.

Despite the importance of the submissions process, the NAC, JPAC,¹ and the Independent Review Committees have felt compelled to offer repeated advice to implement the citizen submissions process in the spirit and letter of the NAAEC. For example, the NAC advised the EPA in 2003 that “a Council interpretation necessarily limiting the scope of inquiry under Articles 14 and 15 to individual cases and excluding broader allegations of failure to effectively enforce would be problematic.”² The 1998 Independent Review Committee recommended that the Parties “scrupulously apply the NAAEC” and “respect . . . the discretion provided to the respective decision-makers at different points in the process.”³

The NAC and JPAC have also advised the Council to respond more quickly to recommendations of the Secretariat to prepare factual records. The JPAC, for example, has specifically advised that the Council “should strive to expedite its decision-making with respect to proposed factual records, so that the factual record, if required, can still be timely. Except in exceptional circumstances, the Council should be able to authorize (or decline to authorize) the development of a factual record within 90 days, recognizing that much of the analysis relevant to that decision will already have been completed by the Secretariat.”⁴

Most recently, the NAC recommended in May 2006 that the United States support the development of factual records concerning enforcement efforts of the United States and vote to approve the development of such factual records at the first alternative representatives of the Council meeting following the publication of the recommendation by the Secretariat.⁵

¹ See, e.g., JPAC, Advice to Council, No. 04-03, *Review of the Operation of Council Resolution 00-09 on Matters related to Articles 14 and 15 of the Agreement*; Joint Public Advisory Committee (Aug. 23, 2004); *Lessons Learned: Citizen Submissions under Articles 14 and 15 of the NAAEC* (June 6, 2001).

² NAC, Advice 2003-13: The Article 14/15 Citizen Submissions Procedure (Oct. 29, 2003).

³ Independent Review Committee (1998), *Four-Year Review of the NAAEC* 21 (June 1998), available at: www.cec.org.

⁴ JPAC, *Lessons Learned: Citizen Submissions under Articles 14 and 15 of the NAAEC* 15 (June 6, 2001).

⁵ NAC, Advice 2006-4 (May 5, 2006).

On December 5, 2005, the Secretariat informed Council that it considered a submission concerning Coal-fired Power Plants (SEM-04-005) to warrant development of a factual record. On May 18, 2005, the Secretariat informed Council that the Secretariat considers a submission concerning pollution of Lake Chapala (SEM-03-003) to warrant development of a factual record. More than two years have passed without a vote on the Coal-fired Power Plants submission and more than two and a half years have passed without a vote on the Lake Chapala submission.

This lack of decision is unnecessary. Given the frequent meetings of the Council and alternative representatives' meetings, the Council has several opportunities each year to vote on recommendations of the Secretariat. Indeed, the Council has voted to approve the development of a factual record in fewer than 90 days at least seven times (See e.g., *Rio Magdalena*, SEM-97-002 [32 days], *Species at Risk*, SEM-06-005 [44 days], *BC Hydro*, SEM-97-001 [57 days]).

The failure of the United States and Council to follow the citizen submission process through timely votes on recommendations of the Secretariat is especially discouraging in light of the repeated requests by the United States government to the NAC over the last two years for advice on how to make the CEC more relevant. The citizen submission process is perhaps the most direct and visible means for citizens to engage the CEC. However, the process only has value, and thus relevance to citizens if the United States and NAAEC Parties respond meaningfully and in a reasonable time to requests from the Secretariat to develop factual records. If the US wishes to maintain the relevance of the CEC generally and the citizen submission process specifically, it must support the development of factual records within a reasonable time. Not only will quickly announcing support for the development of factual records concerning enforcement efforts demonstrate US leadership, it will also underscore the US' commitment to the NAAEC.

Recommendation: The NAC recommends that the US support the development of factual records concerning enforcement efforts of the US and approve the development of such factual records at the first alternative representatives' meeting following the publication of the recommendation from the Secretariat to prepare a factual record.

Recommendation: The NAC recommends that the US propose a rule, to be adopted by Council, directing the Council to vote on recommendations of the Secretariat to prepare factual records within 90 days of the recommendation.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2007-8 (November 19, 2007): other miscellaneous issues

Long term funding for the CEC. The budget for the CEC was raised in the context of the equal participation of all there Parties in the amount of \$3 million US, and the resulting loss in real funds associated with the devaluation of the US dollar. The NAC has often discussed the notion that funding for the CEC is limited in light of the wide responsibilities it is charged with under the NAAEC. The issue of funding and the limitations created by the inability to increase the budget over time became particularly germane in our discussions on Central American Free Trade Agreement (CAFTA). As a matter of comparison, the US State Department's CAFTA budget for environmental projects in 2006 was \$18.5 million; the budget for 2007 is \$19.3 million. This represents a very significant imbalance that should be analyzed.

A community based granting program. The NAC has supported the idea of reinstating a community-based granting program similar to the now defunct North American Fund for Environmental Cooperation (NAFEC) in the past. (See Advice 2006-6, November 15, 2006; and, 2007-3, May 24, 2007). This fund provided an invaluable mechanism to build partnerships outside of the CEC, address priority issues for communities in need, and catalyze capacity-building programs complementary to CEC's in-house cooperative work program. The NAFEC was competitively awarded to community-based organizations; it was uniquely positioned to build partnerships across the North America, and provided an important avenue for outreach, and communications for the CEC.

Competitiveness and a North American identity. As globalization removes barriers to trade, it challenges markets to innovate in many ways. The committees discussed the idea of building and promoting within the CEC a North American identity that will be internationally recognized as a 'green' and environmentally friendly region. This identity would need to be backed by technical expertise, certification programs and capacity building efforts that fit well within the purview of the NAAEC and the Puebla Declaration. The committee also discussed generally how a North American greenhouse gas reduction or limit or might be a prospective criteria for such an initiative adding to the competitiveness of the region.

Mexico and Canada's NAC and GAC. The NAC would like to reiterate once again the importance of maintaining an active and meaningful connection with the CEC's users, and the value of having a network of sister advisory committees in Canada, Mexico, and the US. This was formerly the case with Canada, which historically had a very active NAC that has not been reappointed. Mexico recently formed a working group that fulfills equivalent duties to the NAC via their National Public Participation Consultative Groups on Sustainable Development. We welcome any opportunity to collaborate with our sister committees in Canada and Mexico and strongly believe that the CEC stands to benefit greatly from the added level of transparency, independent

advice, and connection to a wider audience of stakeholders throughout civil society, business, academia, and multiple levels of government afforded by these outside advisory committees.

Recommendation: The NAC recommends that the US begin taking a new look at the CEC's budget in view of its recent successes in the area of internal operations and management reforms, as well as the urgency and top priority of many of its new projects with the view to ensure that the work of the CEC is sufficiently funded in the coming years. The current level of funding will soon be insufficient to meet the needs of the CEC's constituents, particularly as its relevance and effectiveness continues to increase over the next few years.

Recommendation: The NAC supports the idea of designing and implementing a competitive granting program designed to build capacity in local communities in areas and issues that complement the CEC's Operational Plan and its priorities. This granting program should be an invaluable mechanism to raise the awareness of the CEC and its work, engage local stakeholders in the work program of the CEC, and target high priority problems and opportunities where the involvement of local communities is of the essence.

Recommendation: The value of having a network of advisory committees working in parallel and advising all three Parties independently has been discussed at length and supported by all three Parties at different times. The NAC strongly encourages the formation of, and continued collaboration with its sister committees in both Canada and Mexico as a vital mechanism to strengthen the transparency and accountability of CEC's programs, and raise its visibility and outreach potential in all three countries.